

SENATE BILL NO. 47

INTRODUCED BY A. BISHOP

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE DEPARTMENT OF REVENUE MAY FILE A WARRANT FOR DISTRAINT ON ANY DEBT THAT THE DEPARTMENT HAS THE AUTHORITY TO COLLECT; PROVIDING THAT ALL DEBTS THAT THE DEPARTMENT HAS THE AUTHORITY TO COLLECT ARE SUBJECT TO INTEREST; PROVIDING FOR WARRANTS FOR DISTRAINT FOR COLLECTION OF UNPAID UNEMPLOYMENT CONTRIBUTIONS AND ASSESSMENTS; AMENDING SECTIONS 15-1-701, 15-1-702, 15-1-703, 15-1-704, 15-1-705, 15-1-706, 15-1-707, 15-1-708, 15-1-709, AND 39-51-1304, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Interest on debt to be collected by department. The department shall calculate and collect upon any debt transferred to it for collection the amount of interest provided for in 15-1-216 in addition to any penalty and interest previously imposed by the transferring entity.

Section 2. Section 15-1-701, MCA, is amended to read:

"15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the department of revenue or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax or any other debt owed the state that is subject to collection by the department. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer or debtor.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer or debtor located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, the department is a judgment lien creditor, and the department may collect delinquent taxes or other money owed the state and enforce the ~~tax~~ lien in the same manner as a judgment is enforced, except that the department may enforce the judgment lien at any time within 10 years of its creation or effective date, whichever is later.

(3) A warrant may be issued for the amount of unpaid tax or other money owed the state plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant. The priority date of the ~~tax~~ lien created by filing the warrant for distraint is the date the tax or other debt was due as indicated on the warrant for distraint.

(4) The accelerated priority date provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint."

Section 3. Section 15-1-702, MCA, is amended to read:

"15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date or if any other debt owed the state that is subject to collection by the department has not been paid, the department may issue a notice to the taxpayer or debtor notifying ~~him~~ the taxpayer or debtor that unless payment is received within 30 days of the date of the notice, a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to ~~utilize~~ use 15-1-703."

Section 4. Section 15-1-703, MCA, is amended to read:

"15-1-703. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in 15-1-702 if:

(a) the department determines that the collection of the tax or any other debt owed the state that is subject to collection by the department is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are ~~utilized~~ used, the department ~~must~~ shall notify the taxpayer or debtor that warrants have been issued."

Section 5. Section 15-1-704, MCA, is amended to read:

"15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the

1 warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the
2 name of the taxpayer or debtor listed as the judgment debtor.

3 (2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized
4 to collect the tax or other debt owed the state.

5 (3) A judgment lien filed pursuant to this section may be renewed for another 10-year period
6 pursuant to the methods provided in 25-13-102."

7

8 **Section 6.** Section 15-1-705, MCA, is amended to read:

9 **"15-1-705. Review.** (1) Except as provided in 15-1-707, a taxpayer or debtor has the right to a
10 review of the tax liability pursuant to 15-1-211 or of the debt, as provided in subsection (3), prior to
11 execution on a filed warrant for distraint.

12 (2) The department ~~must~~ shall provide notice of the right to review to the taxpayer or debtor. This
13 notice may be given prior to the notice referred to in 15-1-702. If the taxpayer or debtor ~~notified~~ notifies
14 the department that ~~he~~ the taxpayer or debtor disagrees with an assessment, as provided in 15-1-211,
15 or with the amount of money owed to the state, the warrant may not be executed upon until after the
16 review process and any appeals are completed.

17 (3) If the debt owed by the debtor is other than for tax, the debtor has the right to a review by
18 the agency that imposed the debt unless the debt has already been reviewed by the agency."

19

20 **Section 7.** Section 15-1-706, MCA, is amended to read:

21 **"15-1-706. Execution upon warrant.** (1) Upon receipt of a copy of the filed warrant and notice
22 from the department that the applicable hearing provisions have been complied with, the sheriff or agent
23 authorized to collect the tax or any other debt owed the state that is subject to collection by the
24 department shall proceed to execute upon the warrant in the same manner as prescribed for execution
25 upon a judgment.

26 (2) A notice of levy may be made by means of a certified letter by an agent authorized to collect
27 the tax or debt. An agent is not entitled to any fee or compensation in excess of actual expenses incurred
28 in enforcing the warrant.

29 (3) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the
30 date of the warrant.

(4) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment."

Section 8. Section 15-1-707, MCA, is amended to read:

"15-1-707. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if the department determines that the collection of the tax or any other debt owed the state that is subject to collection by the department is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are ~~utilized~~ used, the department ~~must~~ shall notify the taxpayer or debtor and inform the taxpayer or debtor ~~that he has a~~ of the right to request a hearing to be held subsequent to execution. A hearing, if desired, must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under 15-1-705 does not preclude the use of the provisions of this section if the department determines that ~~such~~ the action is appropriate."

Section 9. Section 15-1-708, MCA, is amended to read:

"15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax or the unpaid debt owed the state that is subject to collection by the department plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax or debt, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(3) ~~(a)~~ After making all reasonable efforts to collect unpaid taxes or debts, penalties, and interest on the taxes, debts, and penalties, the department may determine a debt to be uncollectible. ~~Upon determining that a debt is uncollectible, the department may transfer the debt to the department of administration for collection as provided in 17-4-104.~~

~~(b) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of administration may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this~~

~~subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of administration. If less than the full amount of the debt is collected, the department of administration shall retain only a proportionate share of the collection fees or costs."~~

Section 10. Section 15-1-709, MCA, is amended to read:

"15-1-709. Remedy not exclusive. The use of the warrant for distraint provided for in 15-1-701 through 15-1-708 is not exclusive, and the department may use any other remedy provided by law for the collection of tax debts or other debts subject to collection by the department."

Section 11. Section 39-51-1304, MCA, is amended to read:

"39-51-1304. Lien for payment of unpaid taxes -- levy and execution. (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer or against the liable corporate officer or liable member or manager of a limited liability company referred to in 39-51-1105; or a partner in a limited liability partnership, arising at the time that the payments are due. The department may issue a ~~certificate~~ warrant for distraint stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the ~~certificate~~ warrant for distraint as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the methods provided in 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the ~~certificate~~ warrant for distraint as a judgment; and

1 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating
2 that all taxes, penalties, and interest due from the grantor have been paid.

3 (4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by
4 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may
5 proceed under 39-51-1303, this section, or both, to collect the delinquent taxes, penalties, and interest
6 from the:

7 (a) employer;

8 (b) liable corporate officer;

9 (c) liable member or manager of a limited liability company referred to in 39-51-1105; or

10 (d) partner in a limited liability partnership.

11 (5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
12 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
13 upon partial payment or whenever the department determines that the release or partial release of the lien
14 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
15 it determines that the lien is unenforceable."

16
17 NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2001.

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